REMARKS

The Office Action ("OA") has maintained rejection of claims 1-16. The primary references relied upon by the Office Action are US Patent Publication No. 2002/0183056 naming Lundblade et al. as the inventors ("Lundblade") and US Patent Publication No. 2002/0057803 naming Loos et al. as the inventors ("Loos"). Specifically, the Office Action alleges that claims 1-16 are unpatentable over Lundblade in view of Loos under 35 U.S.C. § 103(a). All three independent claims have been rejected based on exemplary claim 1. Applicants respectfully disagree with the rejections for failing to make a prima facie case and further, respectfully request that if the claims are not allowed, the finality of the rejections be withdrawn.

The relied upon references, for instance, Lundblade, are similar to the prior art already discussed in background section of the present application. Not surprisingly they do not disclose the strategy for tackling the complexity posed by application deployment in multiple layer networks described in the claims. Lundblade, for example, is primarily concerned with security issues. (See, for instance, paragraphs 7 and 8 of Lundblade). It is not clear if the Office Action is alleging that security is improved by combining Lundblade's disclosure with Loos. It is respectfully suggested that a motivation to combine Lundblade with other references has yet to be identified in the prior art or for a person with ordinary skill in the art. Instead, exclusive reliance has been on the alleged 'same field of endeavor,' which is insufficient. Moreover, even if the references are combined as alleged, they do not disclose the subject matter of the rejected claims.

Therefore, applicant respectfully requests that the rejections of claims 1-16 be withdrawn and the claims be allowed to proceed to issuance because the Office Action has failed to make a prima facie case for the rejection of the pending claims under 35 U.S.C. § 103(a). This failure is at least due to Lundblade not disclosing or suggesting all of the limitations of the claimed subject matter. For instance, claim 1, in part, may be parsed as requiring: (a) central application server program, (b) configured to (i) be downloaded to one or more remote wireless application server computers, and (ii) to execute on the one or more remote wireless application server computers. The Office Action has not yet addressed detailed limitations of the claims in its examination.

For instance, for claim 1, the Office Action conclusorily alleges that Lundblade discloses "*A wireless application server system comprising digital data stored on one or more storage media, the data further comprising: a central application server program configured to be downloaded to one or more remote wireless application server computers and to execute on the one or more remote wireless application server computers.*" (italics in original on page 3 of the OA). Further, this cursory treatment of exemplary claim 1 is at variance with the well-known examination guidelines in MPEP § 2143.03, which requires that all words in a claim must be considered.

The Office Action notes that Lundblade "teaches a central <u>server</u> is also connected to an <u>application download server</u> (ADS) 215." (page 3 of the OA, emphasis in original). This is not the same as a disclosure of the required *a central application server program* notwithstanding the emphasis in 'central <u>server</u>' made by the Office Action. The two are plainly not the same.

The Office Action then points to the application download server 215 of Lundblade noting that the application download server 215 of Lundblade is "used to interface with a wireless device via a wireless network 220 to <u>download an application</u>. Lundblade does not even indicate that the application is for execution on the server. Lundblade, thus, also does not disclose that the alleged '*central application server program*' is (b) *configured to* (i) *be downloaded to one or more remote wireless application server computers, and* (ii) *to execute on the one or more remote wireless application server computers* as required by claim 1. Instead, application programs, but not a central server program, are disclosed as being downloaded. The two are different concepts as understood by one of ordinary skill in the art. The specification of the present application describes the central server program with additional specificity. The inference that such a program is being disclosed as being downloaded by Lundblade is no more than an impermissible application of hindsight. Therefore, this is well short of the evidence required to finding that Lundblade discloses that the *central application server program* described in the specification is downloaded to the ADS.

The Office Action notes that Lundblade discloses "the central <u>server</u> may also send the permissions list and developer identification associated with the <u>application</u> to the ADS where it can be stored until transmission to a wireless device." (*Id.*, citing to paragraph 0042 and 0048 of Lundblade; emphasis in original). And that "[i]t is preferred

that the <u>application</u>, permission list and the developer identification be digitally signed by the central <u>server</u> to increase security from modification." (*Id.*). This discussion is insufficient to identify in Lundblade the remainder of claim 1, which requires that this *downloaded application server program* execute on the *remote wireless application server computers* and with the aid of *one or more wireless application software components* assist in downloading one or more client applications to one or more portable devices. Plainly put, Lundblade does not disclose any client applications being downloaded in the described manner to a portable device.

The Office Action concedes that Lundblade does not disclose "remote wireless application server programs being configured to transmit to one or more portable devices one or more client applications and to cause the one more portable devices to install the one or more applications." (page 3). This, the Office Action alleges, is taught by Loos. The Office Action does not address compatibility between the disclosure of Loos and Lundblade or a reasonable likelihood of success. More specifically, as is the case with Lundblade, Loos also does not disclose a central application server program. Even the Office Action does not make such an allegation. Therefore, even with the improper hindsight based motivation to combine them, there is still no expectation of success in meeting all of the limitations of claim 1.

Therefore, the rejection of claim 1 should be withdrawn as Lundblade, alone or in combination with Loos, does not teach, disclose or suggest the subject matter of claim 1. The Office Action discussed exemplary claim 1 for rejecting independent claims 1, 8 and 9. Axiomatically, in view of patentability of claim 1, independent claims 8 and 9 are also patentable. Furthermore, all of remaining claims are axiomatically allowable in view of their ultimate dependency on the allowable independent claims. Therefore, it is respectfully requested that all of the pending claims 1-16 be allowed without delay.

If an alternative basis was intended for rejecting all of the pending claims, then it is respectfully requested that the basis be spelled out to allow a response to be formulated. Further, it is respectfully requested that the finality of the rejections be withdrawn in view of the failure to make the required prima facie case for rejecting the pending claims (MPEP § 706.7(c)) because the grounds, if any, for justifying the claim rejections will necessarily be new.

No fees are estimated to be due with this response other than those for the accompanying petition for extension of time. Please charge any additional required fees to Jones Day Deposit Account No. 50-3013. Please do not hesitate in calling the undersigned, should there be any need for clarifications.

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Respectfully submitted,

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